

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES M. WHORTON,

Plaintiff,

Civil No. 2:21-CV-11046

HON. DENISE PAGE HOOD

UNITED STATES DISTRICT JUDGE

v.

JODI DEANGELO,

Defendant,

**OPINION AND ORDER DENYING AS MOOT THE APPLICATIONS TO
PROCEED WITHOUT PREPAYMENT OF FEES AND COSTS ON
APPEAL (ECF Nos. 66, 67).**

James M. Whorton, (“Plaintiff”), incarcerated at the Woodland Center Correctional Facility in Whitmore Lake, Michigan, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The case has a lengthy history but of relevance to this order is that on August 15, 2023, Magistrate Judge Curtis Ivy, Jr. issued a Report and Recommendation that the Defendant’s motion for summary judgment be granted. (ECF No. 60). On August 34, 2023, Plaintiff filed a Notice of Appeal. (ECF No. 61). Plaintiff subsequently filed two applications to proceed without prepayment of fees and costs on appeal. (ECF Nos. 66, 67). On September 29, 2023, this Court overruled Plaintiff’s objections to the Magistrate Judge’s Report and Recommendation and granted the Defendant’s motion for summary judgement and dismissed the case. *Whorton v. Deangelo*, No. 21-11046, 2023 WL 6367685

(E.D. Mich. Sept. 29, 2023). On October 2, 2023, the United States Court of Appeals for the Sixth Circuit subsequently dismissed Plaintiff's pending appeal, because the court lacked jurisdiction over Plaintiff's appeal from Magistrate Judge Ivy's Report and Recommendation since a magistrate judge's report and recommendation is not directly appealable to an appellate court. *Whorton v Deangelo*, No. 23-1771 (6th Cir. Oct. 2, 2023)(ECF No. 70).

In light of the fact that the Sixth Circuit has dismissed Plaintiff's appeal, any request by Plaintiff to proceed *in forma pauperis* on appeal is denied as moot. *See Brown v. Dep't of Corr. Oklahoma State Penitentiary, Warden*, 597 F. App'x 960, 964 (10th Cir. 2014).

IT IS ORDERED that Plaintiff's Applications to Proceed Without Prepayment of Fees and Costs is (ECF Nos. 66, 67) are **DENIED AS MOOT**.

s/Denise Page Hood
United States District Judge

Dated: October 31, 2023